SINGLE BENCH

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IN THE HIGH COURT OF JUDICATURE AT BILASPUR CHHATTISGARH

WRIT PETITION No. 1341/2005

PETITIONER : Moorarka Agencies
Through : Proprietor Vijay Moorarka aged 69 years son of Late Shri Badri Narayan Resident of Khaparganj Distt. - Bilaspur (Chhattisgarh)

VERSUS

RESPONDENTS 1. ~~State of Chhattisgarh,~~
~~Through : Chief Secretary~~
~~Chhattisgarh State Raipur (C.G.)~~

2. Director of Veterinary Services
Directorate of Veterinary Services
Chhattisgarh Raipur (C.G.)

3. Joint Director of Veterinary Services
Directorate of Veterinary Services
Chhattisgarh Raipur (C.G.)

1353/05
Misc. No. ..... Received
Dated 30-03-05

WRIT PETITION UNDER ARTICLE 226/227 OF THE CONSTITUTION OF INDIA FOR ISSUANCE OF WRIT OF MANDAMUS CERTIORARY PROHIBITION AND ANY OTHER WRIT /ORDER/DIRECTION ON THE SAME NATURE IN THE CIRCUMSTANCES OF THE CASE.

RESPONDENT NO 1 :- STATE OF CHHATTISGARH,
THROUGH SECRETARY AGRICULTURE
VETERINARY, RAIPUR.

HIGH COURT OF JUDICATURE AT BILASPUR

(CHHATTISGARH)

Writ Petition No.1341 of 2005

Moorarka Agencies

- Versus -

State of Chhattisgarh & others

POST FOR ORDER ON 25th AUGUST, 2005

Sd/-
L.C. Bhadoo
Judge

HIGH COURT OF JUDICATURE AT BILASPUR, CHHATTISGARH

Writ Petition No.1341 of 2005

Moorarka Agencies

- Versus -

State of Chhattisgarh & others

Present: -

Mr. R. K. Gupta, Advocate: For the petitioner

Mr. N.K. Agarwal, Dy. Adv. General: For the respondents

Before Hon'ble Mr. L.C. Bhadoo, J.

O R D E R

(Passed on 25th August, 2005)

1. The petitioner has preferred this writ petition under Article 226/227 of the Constitution of India questioning the order of respondent No.3 dated 18.2.2005 (Annexure P-1) whereby respondent No.3- Joint Director of Veterinary Services, Directorate of Veterinary Services Chhattisgarh, Raipur rejected the petitioner's tender and also invited fresh tenders vide publication dated 27.2.2005.

2. Brief facts leading to filing of this writ petition are that the respondents were required to purchase vaccine for their use against contagious diseases under the centrally sponsored scheme i.e. 'Assistance to state for the control of Animal Diseases' (ASCAD). Accordingly, a notification inviting tenders from the eligible contractors was published by respondent No.2 in daily Hindi newspaper Dainik Bhaskar dated 10.11.2004 for the purchase of various items including vaccines. In response to that the petitioner submitted his tender documents and in all five persons submitted their tender documents. The tenders

were opened on 4.1.2005 in presence of all the tenderers and the rates quoted by the petitioner were found to be lowest. However, the petitioner's tender was rejected on the grounds that the security deposit, which was required to be deposited through 'bank draft', by mistake same was advertised to be furnished by way of 'term deposit' and the second ground was that for purchase of vaccines was not mentioned in the notice inviting tender. After rejecting the petitioner's tender the respondents decided to invite fresh notice inviting tender and accordingly, fresh tenders was issued in which the tenders were invited only from the manufacturers and not from the authorized dealers/agents, therefore, the petitioner has prayed that fresh notice inviting tender dated 27.2.2005 be quashed and respondents be directed to accept the petitioner's tender.

3. Return has been filed on behalf of the respondents in which it has been mentioned that the second notice inviting tender was issued on 27.2.2005 and after opening the tender document the tender of M/s Intervet India Pvt. Ltd., Pune was accepted on 18.3.2005 and the same being a manufacturer of vaccines and found lowest & fittest that is why the contract has been awarded to the said firm on 17.5.2005, even the supply of vaccines has also started. It has further been mentioned that the tender of the petitioner was rejected on two grounds; firstly, that in the tender form instead of mentioning that security amount shall be deposited by way of bank draft it was mentioned that security amount shall be deposited by way of term deposit and secondly, that in the notice inviting tender there was no mention regarding purchase of vaccines and the second notice inviting tender was invited only from the manufactures in order to ensure the uninterrupted & regular supply of the vaccines.

4. I have heard the learned counsel for the parties.

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5. Learned counsel for the petitioner argued that as per terms & conditions of notice inviting tender security amount was required to deposit through 'term deposit' and the petitioner had complied with that condition, therefore, the respondents ought not to have rejected the petitioner's tender on that ground. He further argued that it is wrong to say that there was no mention regarding purchase of vaccines in the earlier notice inviting tender. He further submitted that in the circumstances, the impugned order cancelling the tender of petitioner be quashed and respondents be directed to place the order with the petitioner for purchase of vaccines.

6. On the other hand, learned Deputy Advocate General for the respondents/State argued that instead of mentioning in the tender form that security amount shall be deposited by way of bank draft it was mentioned that security amount shall be deposited through term deposit and there was no mention regarding purchase of vaccines, therefore, the petitioner's tender was cancelled. He further argued that even otherwise this petition is not maintainable, for the reason that after issuing fresh notice inviting tender the tender of M/s Intervet India Pvt. Ltd. has already been accepted and supply has also been commenced but the said firm has not been made party in the writ petition, therefore, the writ petition is not maintainable.

7. After hearing the counsel for the parties, I have perused the relevant documents. The settled law regarding exercising the power of judicial review in the contractual matters is that the Court can examine the manner in which the contract has been awarded, but merit cannot be looked into and where the action of authority is found to be arbitrary, irrational or biased or where the contract has not been awarded in a transparent, fair and open manner.

8. If we look into the facts of the present case, it is admitted position that the rates quoted by the petitioner were the

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lowest. As has been mentioned above, the respondents have rejected the petitioner's tender only on two grounds that by mistake the security deposit was advertised to be submitted in the form of term deposit instead of bank draft and that there was no mention in the notice inviting tender regarding purchase of vaccines. But, I am of the considered view that both the grounds taken by the respondents for rejecting the petitioner's tender were irrelevant and non-existent, for the reasons that the respondent No.2 himself issued notice inviting tender and as per terms & conditions the petitioner was required to deposit the security amount in the form of term deposit and the petitioner complied with the same. Therefore, the respondents or Committee was not within their right to reject the petitioner's tender on that ground, rather the term deposit was more safe instead of bank draft, because the bank draft, as per banking practice, requires renewal frequently, whereas the term deposit was for a longer term. As such there was no irregularity, which authorizes the respondents to reject the petitioner's tender. The second ground taken by the respondents is also irrelevant and non-existent, as the perusal of notice inviting tender shows that Item No.6 was regarding purchase of vaccines. It is true that in the heading of notice inviting tender it was mentioned that instruments & equipments, chemicals, diagnostic kits, sample collection ware, furniture & other items, but at the last it was mentioned 'and other items' and then the details of those items were published from Item No.1 to 6 and Item No.6 was regarding vaccines. Therefore, there was sufficient indication in the notice inviting tender regarding purchase of vaccines and respondents have arbitrarily, in an irrational manner and without application of mind rejected the earlier tender on the ground that there was no mention of purchase of vaccines. When the respondents had issued notice inviting tender and in response to that the petitioner's rates were found to be lowest, then in all fairness, as a matter of

public policy, the respondents ought to have accepted the petitioner's tender but they have rejected the same on the non-existent grounds in an arbitrary manner.

9. Now coming to the second point raised by learned counsel for the respondents that fresh notice inviting tender was issued and in response to that bid of M/s Intervet India Pvt. Ltd., Pune was found to be the lowest and being the manufacturer of vaccines the tender of said firm was accepted on 18.3.2005 and even orders for purchase of vaccines have already been placed with that firm on 17.5.2005, but the said firm has not been made party to this petition, therefore, without making the said firm party to the petition, the impugned order cannot be quashed. The point raised by learned counsel for the respondents is valid, as the M/s Intervet India Pvt. Ltd., in whose favor the right has been created by accepting his tender and placing the orders for purchase of vaccines, has not been made party in this case, therefore, without giving opportunity of hearing to that party quashing the contract executed in favour of that party will not be justified. By now almost three months have expired after the orders for purchase was placed with that firm and as has been argued by learned counsel for the respondents that even supply has also been started, therefore, for the above reasons, I am of the considered opinion that at this stage without making that firm party quashing of contract will not be justified in any manner.

10. In the result, the writ petition is liable to be dismissed and it is, accordingly, dismissed.

Sd/-
L.C. Bhadoo
Judge

Roshan/-